

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DietGoal Innovations LLC,)	
)	
<i>Plaintiff,</i>)	
)	
)	Civil Action No. 2:11-cv-00418-DF
v.)	Jury Trial Demanded
)	
Arby's Restaurant Group, Inc., et al.,)	
)	
<i>Defendants.</i>)	

**STARBUCKS CORPORATION'S ANSWER TO SECOND AMENDED COMPLAINT
AND COUNTERCLAIMS**

Defendant Starbucks Corporation ("Starbucks") answers the Second Amended Complaint ("the Complaint") of Plaintiff DietGoal Innovation LLC ("Plaintiff" or "DietGoal") as follows:

PARTIES

1. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2. The allegations of paragraph 2 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. The allegations of paragraph 3 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. The allegations of paragraph 4 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and therefore denies them.

5. The allegations of paragraph 5 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5, and therefore denies them.

6. The allegations of paragraph 6 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6, and therefore denies them.

7. The allegations of paragraph 7 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7, and therefore denies them.

8. The allegations of paragraph 8 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, and therefore denies them.

9. The allegations of paragraph 9 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies them.

10. The allegations of paragraph 10 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10, and therefore denies them.

11. The allegations of paragraph 11 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. The allegations of paragraph 12 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies them.

13. The allegations of paragraph 13 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies them.

14. The allegations of paragraph 14 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and therefore denies them.

15. The allegations of paragraph 15 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15, and therefore denies them.

16. The allegations of paragraph 16 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies them.

17. The allegations of paragraph 17 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. The allegations of paragraph 18 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18, and therefore denies them.

19. The allegations of paragraph 19 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19, and therefore denies them.

20. The allegations of paragraph 20 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, and therefore denies them.

21. The allegations of paragraph 21 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21, and therefore denies them.

22. The allegations of paragraph 22 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22, and therefore denies them.

23. The allegations of paragraph 23 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, and therefore denies them.

24. The allegations of paragraph 24 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24, and therefore denies them.

25. The allegations of paragraph 25 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25, and therefore denies them.

26. The allegations of paragraph 26 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26, and therefore denies them.

27. The allegations of paragraph 27 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27, and therefore denies them.

28. The allegations of paragraph 28 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28, and therefore denies them.

29. The allegations of paragraph 29 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29, and therefore denies them.

30. The allegations of paragraph 30 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, and therefore denies them.

31. The allegations of paragraph 31 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31, and therefore denies them.

32. The allegations of paragraph 32 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32, and therefore denies them.

33. The allegations of paragraph 33 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33, and therefore denies them.

34. The allegations of paragraph 34 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34, and therefore denies them.

35. The allegations of paragraph 35 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35, and therefore denies them.

36. The allegations of paragraph 36 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36, and therefore denies them.

37. The allegations of paragraph 37 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37, and therefore denies them.

38. The allegations of paragraph 38 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38, and therefore denies them.

39. The allegations of paragraph 39 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39, and therefore denies them.

40. The allegations of paragraph 40 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 40, and therefore denies them.

41. The allegations of paragraph 41 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41, and therefore denies them.

42. The allegations of paragraph 42 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42, and therefore denies them.

43. The allegations of paragraph 43 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43, and therefore denies them.

44. The allegations of paragraph 44 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44, and therefore denies them.

45. The allegations of paragraph 45 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them.

46. Starbucks admits the allegations of paragraph 46.

JURISDICTION AND VENUE

47. Starbucks admits that this action invokes the United States patent laws. Starbucks denies any remaining allegations of paragraph 47.

48. Starbucks admits that this Court has subject matter jurisdiction over patent law claims. Starbucks denies any remaining allegations of paragraph 48.

49. Starbucks does not contest personal jurisdiction in this District solely for the purpose of this action. Starbucks specifically denies that it has committed any acts of infringement within the Eastern District of Texas, or any other District. To the extent the remaining allegations of paragraph 49 are directed at Starbucks, they are denied. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 49, and therefore denies them.

50. Starbucks admits that venue is proper in the Eastern District of Texas for purposes of this particular action but is not convenient or in the interests of justice under 28 U.S.C. 1404(a). To the extent the remaining allegations of paragraph 50 are directed at Starbucks, they are denied. Starbucks without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 50, and therefore denies them.

THE PATENT-IN-SUIT

51. Starbucks admits that what appears to be a copy of United States Patent No. 6,585,516 (“the ‘516 Patent”) is attached as Exhibit A to Plaintiff’s Second Amended Complaint and that, on its face, the ‘516 Patent is entitled “Method and System for Computerized Visual Behavior Analysis, Training, and Planning.” Starbucks denies any remaining allegations of paragraph 51.

52. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 52, and therefore denies them.

CLAIM 1 – INFRINGEMENT OF U.S. PATENT NO. 6,585,516

53. The allegations of paragraph 53 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53, and therefore denies them.

54. The allegations of paragraph 54 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54, and therefore denies them.

55. The allegations of paragraph 55 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55, and therefore denies them.

56. The allegations of paragraph 56 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56, and therefore denies them.

57. The allegations of paragraph 57 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57, and therefore denies them.

58. The allegations of paragraph 58 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58, and therefore denies them.

59. The allegations of paragraph 59 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59, and therefore denies them.

60. The allegations of paragraph 60 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60, and therefore denies them.

61. The allegations of paragraph 61 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61, and therefore denies them.

62. The allegations of paragraph 62 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 62, and therefore denies them.

63. The allegations of paragraph 63 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 63, and therefore denies them.

64. The allegations of paragraph 64 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 64, and therefore denies them.

65. The allegations of paragraph 65 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 65, and therefore denies them.

66. The allegations of paragraph 66 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66, and therefore denies them.

67. The allegations of paragraph 67 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 67, and therefore denies them.

68. The allegations of paragraph 68 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 68, and therefore denies them.

69. The allegations of paragraph 69 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 69, and therefore denies them.

70. The allegations of paragraph 70 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 70, and therefore denies them.

71. The allegations of paragraph 71 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 71, and therefore denies them.

72. The allegations of paragraph 72 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 72, and therefore denies them.

73. The allegations of paragraph 73 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 73, and therefore denies them.

74. The allegations of paragraph 74 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 74, and therefore denies them.

75. The allegations of paragraph 75 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 75, and therefore denies them.

76. The allegations of paragraph 76 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 76, and therefore denies them.

77. The allegations of paragraph 77 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 77, and therefore denies them.

78. The allegations of paragraph 78 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78, and therefore denies them.

79. The allegations of paragraph 79 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 79, and therefore denies them.

80. The allegations of paragraph 80 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80, and therefore denies them.

81. The allegations of paragraph 81 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 81, and therefore denies them.

82. The allegations of paragraph 82 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 82, and therefore denies them.

83. The allegations of paragraph 83 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83, and therefore denies them.

84. The allegations of paragraph 84 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 84, and therefore denies them.

85. The allegations of paragraph 85 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85, and therefore denies them.

86. The allegations of paragraph 86 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 86, and therefore denies them.

87. The allegations of paragraph 87 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 87, and therefore denies them.

88. The allegations of paragraph 88 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 88, and therefore denies them.

89. The allegations of paragraph 89 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89, and therefore denies them.

90. The allegations of paragraph 90 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90, and therefore denies them.

91. The allegations of paragraph 91 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 91, and therefore denies them.

92. The allegations of paragraph 92 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 92, and therefore denies them.

93. The allegations of paragraph 93 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 93, and therefore denies them.

94. The allegations of paragraph 94 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 94, and therefore denies them.

95. The allegations of paragraph 95 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 95, and therefore denies them.

96. The allegations of paragraph 96 are not directed to Starbucks, and therefore no answer is required. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 96, and therefore denies them.

97. Starbucks denies the allegations in paragraph 97, and specifically denies that it has committed any acts of infringement.

98. To the extent that the allegations of paragraph 98 are directed at Starbucks, they are denied. Starbucks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 98, and therefore denies them.

99. Starbucks denies the allegations in paragraph 99.

100. Starbucks denies the allegations in paragraph 100.

DEMAND FOR JURY TRIAL

101. Plaintiff's demand for a trial by jury for all issues triable to a jury does not state any allegation, and Starbucks is not required to respond. To the extent that any allegations are included in the demand, Starbucks denies these allegations.

AFFIRMATIVE DEFENSES

Incorporating by reference the foregoing paragraphs in their entirety, Starbucks, states its Affirmative Defenses to DietGoal's Second Amended Complaint as follows:

FIRST AFFIRMATIVE DEFENSE – NO PATENT INFRINGEMENT

102. Starbucks does not infringe and has not infringed (not directly, contributorily, or by inducement) and is not liable for infringement of any valid and enforceable claim of the '516 Patent.

103. Starbucks does not infringe and has not infringed any valid and enforceable claims of the '516 Patent either literally or under the doctrine of equivalents.

SECOND AFFIRMATIVE DEFENSE – PATENT INVALIDITY

104. The claims of the '516 Patent are invalid for failure to satisfy the conditions for patentability set forth in Title 35 of the United States Code, including, without limitation, §§ 101, 102, 103, and/or 112.

THIRD AFFIRMATIVE DEFENSE – LACHES

105. Plaintiff's claims are barred, in whole or in part, by laches.

FOURTH AFFIRMATIVE DEFENSE – LIMITATION ON DAMAGES

106. Plaintiff's claim for damages, if any, against Starbucks for alleged infringement of the '516 Patent is limited by 35 U.S.C. §§ 286, 287 and/or 288.

FIFTH AFFIRMATIVE DEFENSE – PROSECUTION HISTORY ESTOPPEL

107. Plaintiff is estopped from asserting one or more of the claims of the patent-in-suit in such a way as to allegedly cover Starbucks's activities by reason of statements and claim amendments made by or on behalf of the applicant to the United States Patent and Trademark Office ("PTO") and/or narrowing amendments made during the prosecution of the applications that led to the issuance of the '516 Patent.

SIXTH AFFIRMATIVE DEFENSE – UNAVAILABILITY OF ENHANCED DAMAGES

108. Upon information and belief, Plaintiff has failed to plead and meet the requirements of enhanced damages or attorney's fees or costs.

RESERVATION OF AFFIRMATIVE DEFENSES

109. Starbucks hereby reserves the right to supplement with additional affirmative defense as discovery proceeds in this matter.

COUNTERCLAIMS

Incorporating by reference the foregoing paragraphs in their entirety, Starbucks asserts the following counterclaims against DietGoal:

PARTIES

1. Counterclaim-Plaintiff Starbucks Corporation (“Starbucks”) has a principal place of business in Seattle, Washington.

2. On information and belief based on Plaintiff’s Second Amended Complaint, Counterclaim Defendant DietGoal Innovations LLC (“DietGoal”) is a Texas Limited Liability Company based in Austin, Texas.

JURISDICTION AND VENUE

3. These counterclaims arise under the patent laws of the United States as enacted under Title 35 of the United States Code and the provisions of the Federal Declaratory Judgment Act. The jurisdiction of this Court is proper under 28.U.S.C. §§ 1331, 1338, 2201 and 2202.

4. Venue is proper in this district pursuant to Title 28 U.S.C. §§ 1391 (b) and (c).

COUNT I – DECLARATION OF NON-INFRINGEMENT

5. Based on DietGoal’s filing of this action and Starbucks’ Affirmative Defenses, an actual controversy has arisen and now exists between DietGoal and Starbucks as to whether Starbucks has infringed or is infringing U.S. Patent No. 6,585,516 (“the ‘516 Patent”).

6. Pursuant to the Federal Declaratory Judgment Action, 28, U.S.C. § 2201 et seq., Starbucks requests a declaration from the Court that Starbucks does not infringe and has not infringed any valid and enforceable claims of the ‘516 Patent.

COUNT II – DECLARATION OF PATENT INVALIDITY

7. Based on DietGoal’s filing of this action and Starbucks’ Affirmative Defenses, an actual controversy has arisen and now exists between DietGoal and Starbucks as to the validity of the ‘516 Patent.

8. Pursuant to the Federal Declaratory Judgment Action, 28, U.S.C. § 2201 et seq., Starbucks requests a declaration from the Court that the ‘516 Patent is invalid.

JURY DEMAND

9. Starbucks respectfully demands a trial by jury.

PRAYER FOR RELIEF

Starbucks respectfully requests a judgment against DietGoal as follows:

A. A declaration that Starbucks does not infringe and has not infringed any valid and enforceable claim of the ‘516 Patent;

B. A declaration that the ‘516 Patent is invalid.

C. That DietGoal take nothing by its Second Amended Complaint.

D. That the Court enter judgment against DietGoal and in favor of Starbucks and that DietGoal’s Second Amended Complaint be dismissed with prejudice;

E. That the Court enter a judgment that this is an exceptional case under 35 U.S.C. § 285 and enter a judgment awarding Starbucks its costs and reasonable attorneys’ fees; and

F. That the Court grant Starbucks whatever further relief the Court may deem just and proper.

Dated: December 29, 2011

BRACEWELL & GIULIANI LLP

/s/Michael Chibib

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***Counsel for Defendant
Starbucks Corporation***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of **DEFENDANT STARBUCKS CORPORATION ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS** via the Court's CM/ECF system per Local Rule CV-5(a)(3) on December 29, 2011. Any other counsel of record will be served via First Class U.S. Mail on this same date.

/s/Michael Chibib

Michael Chibib